

Micah Kelley

NAME

P21536

PRISON NUMBER

F1-5-241

P.O. Box 799001

CURRENT ADDRESS OR PLACE OF CONFINEMENT

San Diego, CA 92179-9001

CITY, STATE, ZIP CODE

2254	1983
FILING FEE PAID	
Yes	No
INFORMATION FILED	
Yes	No
CONSENT TO	
Court	Pro Se

FILED
AUG - 7 2008
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY <i>RM</i> DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Micah Kelley

(FULL NAME OF PETITIONER)

PETITIONER

v.

Robert J. Hernandez

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

Edmund G. Brown, Jr.

The Attorney General of the State of California, Additional Respondent.

Civil No. '08 CV 1440 BTM BLM

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: California Superior Court, San Bernardino County
2. Date of judgment of conviction: Dec. 10, 1998
3. Trial court case number of the judgment of conviction being challenged: FVA 09223/ SWHSS 9319
4. Length of sentence: 2 years

5. Sentence start date and projected release date: Released March 13, 1999
6. Offense(s) for which you were convicted or pleaded guilty (all counts): P.C. 186.22
(A) and P.C. 12022.5 (A)
7. What was your plea? (CHECK ONE)
 (a) Not guilty ☒
 (b) Guilty ☐
 (c) Nolo contendere ☐
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
 (a) Jury ☒
 (b) Judge only ☐
9. Did you testify at the trial?
☐ Yes ☒ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
☐ Yes ☒ No
11. If you appealed in the California Court of Appeal, answer the following:
 (a) Result: _____
 (b) Date of result, case number and citation, if known: _____

 (c) Grounds raised on direct appeal: _____

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
 (a) Result: _____
 (b) Date of result, case number and citation, if known: _____

 (c) Grounds raised: _____

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

(a) Result: _____

(b) Date of result, case number and citation, if known: _____

(c) Grounds raised: _____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☒ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: SWHSS 9319

(b) Nature of proceeding: Petition for Writ of Habeas Corpus

(c) Grounds raised: Insufficient Evidence, Actual Innocence, Prosecution Misconduct Improper Jury Instructions, Conviction of Conduct Protected by 1st Amendment

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☒ Yes ☐ No

(e) Result: Denied

(f) Date of result: April 2, 2007

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☒ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

- (a) **California Court of Appeal** Case Number: E043051
- (b) Nature of proceeding: Petition for Review
- (c) Grounds raised: Same Grounds in Petition for Writ of Habeas Corpus
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☒ Yes ☐ No
- (e) Result: Denied
- (f) Date of result: May 22, 2007

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?

☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

- (a) **California Supreme Court** Case Number: _____
- (b) Nature of proceeding: _____
- (c) Grounds raised: _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result: _____
- (f) Date of result: _____

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court containing the grounds raised in this federal Petition, explain briefly why you did not:

Because the Court of Appeal did not review a opinion and
the direct appeal of my other case began. I also was
transferred and was denied access to the law library

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? _____

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: _____

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUND FOR RELIEF

22. State concisely every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States.

(a) Ground One:

Petitioner is actually innocent of the crime of which he was convicted, resulting in a miscarriage of justice. This violated petitioner's due process right guaranteed by the U.S. Constitution's 5th and 14th Amendments. Case authority: Schlup.V.Deio, 513 U.S. 298 (1995)

Supporting FACTS:

The petitioner was found not guilty on the underlying offence of attempted murder and the two (2) lesser charges of assault with a deadly weapon A&B, but was still found guilty on a gang enhancement (186.22)(A) and a gun enhancement (12022.5 (A), which is an incorrect verdict and an illegal conviction. Both convictions are "Specifice Enhancements" under penal code § (1170.11) that relates to the circumstances of the underlying crime, which the petitioner was fully acquitted of. In order to be held liable of 186.22(A), one must "at least" aid an abet a separate felony offence committed by a gang member. The petitioner was acquitted of all separate felony offences. The trial court failed to vacate these illegal convictions. 186.22(A) is a criminal gang offence. Actions have to be criminal. The petitioner was acquitted of aall criminal conduct.

Did you raise Ground One in the California Supreme Court? No

7. GROUNDS FOR RELIEF

Ground 2:

Petitioner's conviction resulted from Jury instructions that were fundamentally defective such that petitioner is actually innocent of the charge he was convicted. This violated the petitioner's right to due process, right to jury trial, as guaranteed by the U.S. Constitution's 5th and 14th Amendments and 6th Amendment. Case authority: Richardson v. U.S. 813, (1999)

Supporting FACTS:

The trial court failed to explain in detail the jury instructions to the underlying offence and the specific enhancements allegations and failed to instruct that if found not guilty on the underlying offence and the two (2) lesser charges that the petitioner must be fully acquitted of all other charges thereof. It is illegal to impose a sentence on an enhancement but not on the underlying offences, which the petitioner was fully acquitted of. The jury failed to return the correct verdict. 186.22(A) requires one to willfully promote, further, or assist "felonious crimes/cunduct." The petitioner was fully acquitted of all felonious criminal conduct.

Did you raise Ground two in the California Supreme Court? No

8. Ground 3:

Petitioner was convicted on the basis of conduct which constituted protected freedom of association. This violated petitioner's right to freedom of association as guaranteed by the U.S. Constitution, the 5th, 14th, and 1st Amendments. Case authority: N.A.A.C.P.V. Alabama, 357 447 (1958)

Supporting FACTS:

The legislative findings and declaration of the street terrorism enforcement and prevention act (S.T.E.P.) Act, specifically states it is not the intent of the chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association that are protected by 1st, 5th, and 14th Amendments. The constitutional Rights of every citizen to harbor and express beliefs on any lawful subject whatsoever and associate with others who share similar beliefs. So when convicted of 186.22(A) without a separate crime, felony or misdemeanor those rights and beliefs are infringed upon and violated. It is not illegal to be a gang member, it is illegal to be a gang member and commit a crime. States requires active participation and cannot punish a person for actions of associates.

Did you raise Ground 3 in the California Supreme Court? No

statement of facts

Petitioner was convicted on less than proof beyond a reasonable doubt of every element of the charged crime. This violated the petitioner's right to due process and a fair trial, as guaranteed by the United States Constitution and the 5th and 14th amendments. case authority: In Re Windship, 397 U.S. 358 (1970)

In order to satisfy the requirements for street terrorism, 186.22 (A) prosecution has to prove a pattern of criminal gang activity through two (2) predicate offenses or more, on separate occasions, or by two or more persons within a three (3) year period, which would be impossible because prior to this case neither the petitioner or the co-defendants had prior convictions, and the charged underlying crime could not be used because the petitioner was fully acquitted of that. The prosecution must also prove that the petitioner "aided and abetted a separate felony offence," which would also be impossible because the petitioner was fully acquitted of all separate underlying offences. The statute also requires that one must actively participate in the felonious criminal conduct. Conduct which is clearly felonious, i.e. which amounts to commission of offence punishable by imprisonment in State prison.

(People v Gamez (App.4.dist. 1991) 286 Cal.RPTR.894, 235 Cal.App. 3d 957. (People v IoeUn (1997) 69 Cal.RPTR.2d 776 17 Cal.4th.14 947 p. 2d 1313 (In Re Nathaniel. C. (App.1dist.1991) 279, Cal.RPTR 236, 228 Cal.App. 301 990. (In Re eliodio (App.5 Dist.1997) 66 Cal.RPTR.2d 95, 56.Cal.App.4th 1175 (In Re Jose P App.6 dist. 2003) 130 Cal.RPTR.2d 810, 106 Cal.App.4th 458

(B)

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

☒ Yes ☐ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: California Superior Court, Fontana

(b) Case Number: FVA 23650 || E043200

(c) Date action filed: Oct. 18, 2007

(d) Nature of proceeding: Criminal & Appeal

(e) Grounds raised: Instructional Jury Error

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☒ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Fontana's Public Defender's Office

(b) At arraignment and plea: Public Defender

(c) At trial: Micheal Duncan, San Bernardino Count State
appointed

(d) At sentencing: Michael Duncan

(e) On appeal: n/a

(f) In any post-conviction proceeding: n/a

(g) On appeal from any adverse ruling in a post-conviction proceeding: n/a

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☒ Yes ☐ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

California Superior, San Bernardino Co unty

(b) Give date and length of the future sentence: 27 years to life

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☒ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: _____

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

PRO PER

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7/14/08
(DATE)

Muel Kael
SIGNATURE OF PETITIONER

Micah Akeem Kelley
No. P21536-Fac-1-5-136
Donovan Correctional Facility
P.O. Box 799001
San Diego, Ca. 92179-9001

IN AND FOR THE CALIFORNIA SUPREME COURT
STATE OF CALIFORNIA

To: Clerk Office

Dear Sir/Madam,

I am the above name inmate in regards to this letter. I'm requesting this court to provide me with the case number and file date my petition for review by writ of habeas corpus was filed in this court. I'm enclosed a self stamp return envelope in regard to the matter.

Executed on: _____

Respectfully Submitted


Micah Akeem Kelley

Name

MICAH AKEEM KELLEY

Address

R. J DONOVAN

P.O. BOX 799001

SAN DIEGO, CA 92179-90001

CDC or ID Number

P. 21536

Petition FOR
ReviewSUPREME COURT OF
CALIFORNIA
(Court)

PETITION FOR WRIT OF HABEAS CORPUS

No.

(To be supplied by the Clerk of the Court)

CASE # FVA09223/SWHS939

APPELLANT	MICAH AKEEM Kelley
Petitioner	
vs.	
Respondent	CALIFORNIA Attorney General

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

Name

MICHAEL AKEEM KELLEY

Address

9500 ETIWANDA AVERANCHO CUCAMONGA, CA91739

CDC or ID Number

#0603343342CDC# P.21536STATE OF CALIFORNIA, COURT OF
APPEAL, 4TH APPELLATE DISTRICT (DIVISION 2)
COUNTY OF (Court) SAN BERNARDINO.

PETITION FOR WRIT OF HABEAS CORPUS

"APPELLANT," MICHAEL AKEEM KELLEY

Petitioner

vs.

CALIFORNIA ATTORNEY GENERAL

Respondent

No.

(To be supplied by the Clerk of the Court)

(CASE NO. FVA09223/JWHJS9319)

INSTRUCTIONS — READ CAREFULLY

- € If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- € If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- € Read the entire form *before* answering any questions.
- € This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- € Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- € If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- € If you are filing this petition in the Court of Appeal, file the original and four copies.
- € If you are filing this petition in the California Supreme Court, file the original and thirteen copies.
- € Notify the Clerk of the Court in writing if you change your address after filing your petition.
- € In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rules 56.5 and 201(h)(1) of the California Rules of Court [as amended effective January 1, 1999]. Subsequent amendments to Rule 44(b) may change the number of copies to be furnished the Supreme Court and Court of Appeal.

Page one of six

This petition concerns:

- ☒ A conviction ☐ Parole
☒ A sentence ☐ Credits
☐ Jail or prison conditions ☐ Prison discipline
☐ Other (specify): _____

1. Your name: MICHAEL KEENE KELEY
 2. Where are you incarcerated? SAN BERNARDINO COUNTY Jail
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").
I WAS FULLY ACQUITTED OF MY UNDERLYING OFFENSE OF ATTEMPTED MURDER AND THE 2 LEVER CHARGE OF ASSAULT BUT FOUND
 b. Penal or other code sections: GUILTY OF 2 ENHANCEMENTS P.C. 186.22(A) & 12022.5
 c. Name and location of sentencing or committing court: SAN BERNARDINO COUNTY, WEST VALLEY
 d. Case number: FVA09223 / SWHVS9319
 e. Date convicted or committed: 12/10/98
 f. Date sentenced: 12/10/98
 g. Length of sentence: 2 YEARS
 h. When do you expect to be released? PAROLED MARCH 13, 1999
 i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:
MICHAEL DUNCAN, STATE ATTORNEY

4. What was the LAST plea you entered? (check one)

- ☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

- ☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement" (if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

PETITIONER IS ACTUALLY INNOCENT OF THE CRIME OF WHICH HE WAS
CONVICTED, RESULTING IN A MISFEASANCE OF JUSTICE WHICH CAN BE
CORRECTED ON HABEAS CORPUS. THIS VIOLATED PETITIONER'S RIGHT
TO DUE PROCESS, GUARANTEED BY THE U.S. CONSTITUTION 5TH AND 14TH
AMENDMENTS. CASE AUTHORITY: SCHUPP V. DELO, 513 U.S. 298 (1995)

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

I WAS FOUND NOT GUILTY ON MY UNDERLYING OFFENSE
OF ATTEMPTED MURDER AND THE 2 LEVER CHARGES
OF ASSAULT WITH A DEADLY WEAPON A & B, BUT WAS
STILL FOUND GUILTY ON A GANG ENHANCEMENT (186.22(A))
AND A GUN ENHANCEMENT (12022.5(A)) AN INCORRECT
VERDICT AND AN ILLEGAL CONVICTION. BOTH CONVICTIONS
ARE "SPECIFIC ENHANCEMENTS" UNDER P.C. SECTION "1170.11"
THAT RELATES TO THE CIRCUMSTANCES OF THE UNDERLYING
CRIME, WHICH I WAS FULLY ACQUITTED OF. IN ORDER TO
BE HELD LIABLE OF 186.22(A) YOU MUST AT LEAST
AID OR ABET A VIOLENT FELONY OFFENSE
COMMITTED BY GANG MEMBERS. TRIAL COURT
FAILED TO VACATE THESE ILLEGAL CONVICTIONS

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

(PEOPLE V. GREEN, SUPRA, 227 CAL. APP. 3D AT P. 699, 278
CAL. RPT. 140. (PEOPLE V. CASTENADA, SUPRA 23 CAL.
4TH 743, 750, 97 CAL. RPT. 2D 906, 3 P. 3D 278 (IN RE ALBERT
R.) (APP. 4 DMT. 1991) 1 CAL. RPT. 2D 348, 235 CAL. APP. 3D 1309
IN RE HARRIS, (1993) 5 CAL. 4TH 813 (IN RE WINDMIP, 397 U.S. 358, 3.

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

PETITIONER'S CONVICTION RESULTED FROM JURY INSTRUCTIONS THAT WERE FUNDAMENTALLY DEFECTIVE, SUCH THAT PETITIONER IS ACTUALLY INNOCENT OF THE CHARGES WHICH HE WAS CONVICTED. THIS VIOLATED PETITIONER'S RIGHT TO DUE PROCESS, RIGHT TO JURY TRIAL, AS GUARANTEED BY THE U.S. CONSTITUTION. THE 5TH, 14TH AND 6TH AMENDMENTS. CASE

- a. Supporting facts: AUTHORITY: RICHARDSON V. U.S. 526 U.S. 813 (1999)
Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

THE TRIAL COURT FAILED TO EXPLAIN IN DETAIL THE JURY INSTRUCTIONS TO THE UNDERLYING OFFENSE AND THE SPECIFIC ENHANCEMENT ALLEGATIONS AND FAILED TO INSTRUCT THAT IF FOUND NOT GUILTY ON THE UNDERLYING OFFENSE AND THE TWO UNDER CHARGES THAT I SHOULD BE FULLY ACQUITTED OF ALL CHARGES THERE OF. IT IS ILLEGAL TO IMPOSE A SENTENCE ON AN ENHANCEMENT, BUT NOT ON THE UNDERLYING OFFENSE WHICH I WAS ACQUITTED OF. JURY FAILED TO RETURN THE CORRECT VERDICT. 186.22(A) REQUIRES YOU TO WILLFULLY PROMOTE, FURTHER, OR ASSIST "FELONIOUS CRIMINAL CONDUCT". I WAS ACQUITTED OF ALL FELONIOUS CRIMINAL

- b. Supporting cases, rules, or other authority (optional):
(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

PEOPLE V. MCFARLAND (1989) 47 CAL. 3D 718, 802 P.2D 6, 234 CAL. RPT. 331, 765 P.2D 493. PEOPLE V. BRADLEY (1998) 64 CAL. APP. 4TH 386, 390, 75 CAL. RPT. 2D 244. (HEWITT V. HELMS, 59 U.S. 460 (1983)) FORD V. WAINWRIGHT, 447 U.S. 399 (1983) (JACKSON V. VIRGINIA, 443 U.S. 308 (1979)) (PEOPLE V. KELLY (1992) 1 CAL. 4TH 495, 525, 3 CAL. RPT. 2D 1 (1991))

7. Ground 2 or Ground

(if applicable):

PETITIONER WAS CONVICTED ON THE BASIS OF CONDUCT WHICH CONSTITUTED PROTECTED FREEDOM OF ASSOCIATION. THIS VIOLATED PETITIONER'S RIGHT TO FREEDOM OF ASSOCIATION AS GUARANTEED BY THE U.S. CONSTITUTION, THE 5TH, 14TH AND 1ST AMENDMENTS.

a. Supporting facts: CASE AUTHORITY: N.A.A.C.P. V. ALABAMA, 357 U.S. 449 (1958)

THE LEGISLATIVE FINDINGS AND DECLARATION OF THE STREET TERRORISM ENFORCEMENT AND PREVENTION ACT (STEP) ACT SPECIFICALLY STATES IT IS NOT THE INTENT OF THE CHAPTER TO INTERFERE WITH THE EXERCISE OF THE CONSTITUTIONALLY PROTECTED RIGHTS OF FREEDOM OF EXPRESSION AND ASSOCIATION THAT ARE PROTECTED BY 1ST 5TH AND 14TH AMENDMENTS. THE CONSTITUTIONAL RIGHTS OF EVERY CITIZEN TO HARBOR AND EXPRESS BELIEFS ON ANY LAWFUL SUBJECT WHATSOEVER AND ASSOCIATE WITH OTHERS WHO SHARE SIMILAR BELIEFS. SO WHEN CONVICTED OF 186.22(A) WITHOUT A VIOLENCE CRIME, FELONY OR MINDEN-EDOR THOSE RIGHTS AND BELIEFS ARE FURTHER VIOLATED UPON AND VIOLATED. IT IS NOT ILLEGAL TO BE A GANG MEMBER, IT IS ILLEGAL TO BE A GANG MEMBER AND COMMIT A CRIME. STATE REQUIRES ACTIVE PARTICIPATION AND CANNOT PUNISH YOU FOR ACTIONS OF ASSOCIATES.

b. Supporting cases, rules, or other authority:

(PEOPLE V. GOMEZ (APP. 4 DIST. 1997) 286 CAL. RPTK. 894, 235 CAL. APP. 3d 957. (PEOPLE V. GARDELEY) (1996) 14TH CAL. 4TH 605, 622 623, 59 CAL. RPTK. 2d 356, 927 P. 2d 713. (PEOPLE V. HERRERS (1999) 70 CAL. APP. 4TH 1456, 1467, 83 CAL. RPTK. 2d 307. (PEOPLE V. GARCIA (2001) 124 CAL. RPTK. 2d 464, 28 CAL. 4TH 1166, 52 P. 3d 648 (ROBERT V. UNITED STATES JAYCEES) SUPRE (1984) 468 U.S. AT P. 622 [104 S. CT 32

STATEMENT OF FACTS

PETITIONER WAS CONVICTED ON LESS THAN PROOF BEYOND A REASONABLE DOUBT OF EVERY ELEMENT OF THE CHARGED CRIME. THIS VIOLATED PETITIONER'S RIGHT TO DUE PROCESS AND A FAIR TRIAL, AS GUARANTEED BY THE UNITED STATES CONSTITUTION, AND THE 5TH AND 14TH AMENDMENTS. CASE AUTHORITY: IN RE WINDSHIP, 397 U.S. 358 (1970)

IN ORDER TO SATISFY THE REQUIREMENTS FOR STREET TERRORISM, 186.22(A) PROSECUTION HAS TO PROVE A "PATTERN OF CRIMINAL / GANG ACTIVITY" THROUGH 2 PREDICATE OFFENSES OR MORE, ON SEPARATE OCCASIONS, OR BY TWO OR MORE PERSONS, WITHIN A 3 YEAR PERIOD. WHICH WOULD BE IMPOSSIBLE BECAUSE PRIOR TO THIS CASE NEITHER ME OR MY CO DEFENDANTS HAD PRIOR CONVICTIONS, AND THE CHARGES UNDERLYING CRIME COULDN'T BE USED BECAUSE I WAS FULLY ACQUITTED OF THAT. THE PROSECUTION MUST ALSO PROVE THAT I "AIDED" AND ABETTED A SEPARATE FELONY OFFENSE WHICH WOULD ALSO BE IMPOSSIBLE BECAUSE I WAS FULLY ACQUITTED OF ALL MY SEPARATE UNDERLYING OFFENSES. THE STATUTE ALSO REQUIRES THAT YOU "ACTIVELY PARTICIPATE" IN THE "FELONY CRIMINAL CONDUCT." CONDUCT WHICH IS CLEARLY FELONY, I.E., WHICH AMOUNTS TO COMMISSION OF OFFENSE PUNISHABLE BY IMPRISONMENT IN STATE PRISON.

(PEOPLE V. GANEZ (APP. 4 DIST. 1991) 286 CAL. RPT. 894, 235 CAL. APP. 301 957. (PEOPLE V. LOEUN (1997) 69 CAL. RPT. 20176 17 CAL. 4TH 1, 947 P. 20 1313. (IN RE NATHANIEL C. (APP. 1 DIST. 1991) 279 CAL. RPT. 236, 228 CAL. APP. 301 990. (IN RE ELIODO (APP. 5 DIST. 1997) 66 CAL. RPT. 201 95, 56 CAL. APP. 4TH 1175 (IN RE JOSE P. APP. 6 DIST. 2003) 130 CAL. RPT. 29 B10, 106 CAL. APP. 4TH 458

MEMORANDUM OF POINTS AND AUTHORITIES

(IN PEOPLE V. GREEN) SUPRA, 227 CAL. APP. 3d 692, 700-704 278 CAL. RPT. 140. THE COURT'S INTERPRETATION OF THE SECTION 186.22 (A), WAS THAT IT MADE ACTIVE PARTICIPATION IN A CRIMINAL STREET GANG, CRIMINAL "UNDER" "SPECIFIED CIRCUMSTANCES." THE STATUTE SPECIFIES THOSE CIRCUMSTANCES: WILLFULLY PROMOTING, FURTHERING OR ASSISTING FELONIOUS CRIMINAL CONDUCT BY GANG MEMBERS WITH KNOWLEDGE THAT GANG MEMBERS ENGAGE OR HAVE ENGAGED IN A PATTERN OF CRIMINAL GANG ACTIVITY. THE PHRASE "WILLFULLY PROMOTE, FURTHER, OR ASSIST IN ANY FELONIOUS CRIMINAL CONDUCT BY MEMBERS OF THAT GANG" HAS BEEN INTERPRETED TO MEAN THAT THE DEFENDANT MUST BE LIABLE, AT LEAST AS AN AID OR ABETOR, IN THE COMMISSION OF A FELONY BY A MEMBER OF THE GANG. IT ALSO HELD THAT ACTIVE PARTICIPATION MUST BE MORE THAN MERE MEMBERSHIP, I.E., AN INTENTIONAL RELATIONSHIP TO OR INVOLVING WITH AN ORGANIZATION. (CAL P. 699, 278 CAL. RPT. 140.) CRIMINAL LIABILITY MAY NOT BE PREDICATED ON MEMBERSHIP ALONE.

(IN RE ALBERTO R.) (AP. 4d int. 191) 1 CAL. RPT. 2d 348, 235 CAL. APP. 3d 1309. WHEN NARROWLY CONSTRUED TO PERTAIN "ONLY" TO CONDUCT THAT WAS PURELY FELONIOUS, I.E., PUNISHABLE IN STATE PRISON, PHRASE "FELONIOUS CRIMINAL CONDUCT" AS USED IN STATUTE MAKING IT OFFENSE TO PROMOTE, FURTHER OR ASSIST WAS NOT UNCONSTITUTIONAL.

(IN PEOPLE V. CAUTERERA, SUPRA), 23 CAL. 4th 743, 750 97 CAL. RPT. 2d 906, 3P. 3d 278. THE COURT CONCLUDED... THAT: A PERSON LIABLE UNDER SECTION 186.22 (A) MUST AID AND ABET A SEPARATE FELONY OFFENSE COMMITTED BY GANG MEMBERS. IN THAT WAY, AS THE BILL'S PROponents STRESSED, SECTION 186.22 (A) GOES BEYOND THE ACTIVE MEMBERSHIP TEST IN (SCALES, SUPRA, 367 U.S. AT P. 255, 79-29, 81 S. CT 1499) WHICH ALLOWED A CRIMINAL CONVICTION OF ANYONE HOLDING ACTIVE MEMBERSHIP IN A SUBVERSIVE ORGANIZATION, WITHOUT REQUIRING THAT THE MEMBER AID & ABET ANY PARTICULAR CRIMINAL OFFENSE COMMITTED BY OTHER MEMBERS

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes. ☒ No. If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

BECAUSE THE D.A. LYLE SCALON LIED AND SAID THE CONVICTION
WAS VALID AND COERCED ME INTO GIVING UP MY RIGHT TO APPEAL FOR
A DISMISAL OF THE "GUN ALLEGATIONS" WHICH WAS AN ILLEGAL CONVICTION.
Too

11. Administrative Review:

- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: SUPERIOR COURT OF CALIFORNIA, SAN BERNARDINO
 (2) Nature of proceeding (for example, "habeas corpus petition"): WRIT OF HABEAS CORPUS
 (3) Issues raised: (a) SAXIE FURUEZ
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: APRIL 2ND 2007
- b. (1) Name of court: _____
 (2) Nature of proceeding: _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:
SUPERIOR COURT OF CALIFORNIA, SAN BERNARDINO
4/2/2007 DENIED AND I AM APPEALING NOW.
15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)
THIS CLAIM IS BASED ON NEWLY DISCOVERED EVIDENCE THAT
DESPITE DUE DILLIGENCE WASN'T DISCOVERED UNTIL ALLEGEDLY PRIOR

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes. ☐ No. If yes, explain:

ANOTHER CASE WHERE THIS CASE IS ALLEGEDLY PRIOR
(FV4026530)

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I AM APPEALING LOWER COURT DECISION.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

APRIL 23, 2007

Michael Kelley
 (SIGNATURE OF PETITIONER)

105 Cal.Rptr.2d 837, 88 Cal.App.4th 432, People v. Ngoun, (Cal.App. 5 Dist. 2001)

"In order to prove this crime, each of the following elements must be proved:

"1. A person actively participated in a criminal street gang,

"2. The members of that gang engaged in or have engaged in a pattern of criminal gang activity,

"3. That person knew that the gang members engaged in or have engaged in a pattern of criminal gang activity; and

"4. That person aided and abetted [a] member[s] of that gang in committing the crime[s] of _____. " (Emphasis added.)

This instruction was appropriately adapted to the facts of this case by the trial court.

*840 (FN21.) Subdivision (b) of section 186.22 increases the punishment for gang-related crimes. (§ 186.22 subd. (b).) Section 186.22, subdivision (a), encompasses a more complex intent and objective than subdivision (b). (People v. Robles (2000) 23 Cal.4th 1106, 1115, 99 Cal.Rptr.2d 120, 5 P.3d 176.)

COUNTY OF SAN BERNARDINO SUPERIOR COURT
STATE OF CALIFORNIA
MINUTE ORDER

CASE NO: SWHSS9319 DATE: 04/02/07

CASE TITLE: IN THE MATTER OF MICAH AKEEM KELLEY

DEPT: S8 04/02/07 TIME: 8:30
Hearing re: PETITION FOR WRIT OF HABEAS CORPUS

COMPLAINT TYPE: WHC

JUDGE JOHN P WADE presiding.

Clerk: Margaret Knowlton

Not reported

APPEARANCES:

No appearance.

PROCEEDINGS:

THE COURT HAS READ AND CONSIDERED THE PETITION FOR WRIT OF HABEAS
CORPUS AND RULES AS FOLLOWS:

PETITION FOR WRIT OF HABEAS CORPUS of KELLEY Denied

PLEASE SEE WRITTEN RULING FOR ANY FINDINGS.

Correspondence coversheet generated to mail ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS to counsel of record.

Notice given by Courtroom Clerk.

Stage at Disposition: All other judgments before trial.

Case dispositioned by Judgment

=== MINUTE ORDER END ===

=== MINUTE ORDER END ===

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino Superior Court
351 N Arrowhead Ave
San Bernardino, CA 92415

CASE NO: SWHSS9319

MICAH AKEEM KELLEY
9500 ETIWANDA AVE
CDC#P21536/0603343342
RANCHO CUCAMONGA CA 91739

I M P O R T A N T C O R R E S P O N D E N C E

From the above entitled court, enclosed you will find:

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS}

CERTIFICATE OF SERVICE BY MAIL

I hereby declare that I am over the age of 18 years, a resident of San Bernardino County, State of California, and not a party to nor interested in the above-entitled case. I am a Deputy Court Executive Officer of the said County and on the date shown below I served the above named document by enclosing it in an envelope addressed to the interested party, for collection and mailing this date, following ordinary business practice.

Executed on 04/02/07 at San Bernardino, CA. By: MARGARET KNOWLTON

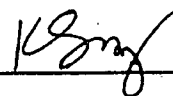
S _____

M A I L I N G C O V E R S H E E T

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR - 2 2007

SUPERIOR COURT
COUNTY OF SAN BERNARDINO
Department No. S-8
351 North Arrowhead Avenue
San Bernardino, California 92415-0240

BY  DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT**

In re the Petition of

MICAH AKEEM KELLEY,

For Writ of Habeas Corpus.

Case No. SWHSS-9319

ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS

The Petition of MICAH AKEEM KELLEY for Writ of Habeas Corpus was filed in this Court on March 12, 2007.

Therein, Petitioner contends that:

1. He is actually innocent of the crime he has been convicted of committing.
2. The prosecutor "lied" and said the convictions were valid.
3. The jury instructions in his trial were improper.
4. He was convicted of conduct which is protected freedom of association.

On August 13, 1998, Petitioner was found guilty of a violation of Penal Code § 186.22(A) and 12022.5(A) (case No. FVA 09223). On December 10, 1998, the Petitioner waived his appeal rights, and based on such waiver the prosecutor struck the Penal Code § 12022.5 allegation. The middle term of two years in State Prison was imposed. According to the Petition he was released March 13, 1999.

1 Petitioner is contending that his conviction of Penal Code 186.22(A) is invalid
2 because it is an enhancement statute not a felony itself.

3 Petitioner is incorrect, Penal Code § 186.22(A) is a separate felony punishable by
4 State Prison. His conviction is not invalid.

5 There is no proof that he is "innocent". There is ^{no}~~no~~ evidence that the prosecutor
6 "lied". Jury instruction error is a matter for appeal which Petitioner has waived.

7 Lastly, participation in a criminal gang is not protected association.
8

9 The Petition is denied.

10
11 Dated this 2nd day of April, 2007.

12
13
14 JOHN P. WADE

15 JOHN P. WADE
16 Judge of the Superior Court
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Telephone No:

Fax No:

ATTORNEY FOR (Name):

"PRO PDR"
MICAH KELLEY #0603343342

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

SAN BERNARDINO

STREET ADDRESS:

COURT OF APPEAL

MAILING ADDRESS:

4TH APPELLATE DISTRICT

CITY & ZIP CODE:

DIVISION TWO

BRANCH NAME:

3389 TWELFTH STREET

RIVERSIDE, CA 92501

PETITIONER/ PLAINTIFF:

ATTORNEY GENERAL

RESPONDENT/DEFENDANT:

MICAH KELLEY
#0603343342

PROOF OF SERVICE

CASE #: FVA09223/SWHSS9319

NOTICE: To serve temporary restraining orders you must use personal service (see form 1285.84).

1. I am over the age of 18, not a party to this cause, and not a protected person listed on any of the orders. I am resident of or employed in the county where the mailing took place.

2. My residence or business address is:

9500 ETIWAH AVE
RANCHO OCCANYONGA AVE
91739

3. I served a copy of the following documents (specify):

"WRIT OF HABEAS CORPUS"
TO: CALIFORNIA APPELLATE COURT

By enclosing them in an envelope AND

- a. ☐ Depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
- b. ☐ Placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. The envelope was addressed and mailed as follows:

a. Name of person served:

COURT OF APPEAL
4TH APPELLATE DISTRICT
DIVISION TWO

b. Address:

3389 TWELFTH STREET
RIVERSIDE, CA 92501

c. Date Mailed:

SAN BERNARDINO, CA
D.A.'S OFFICE

d. Place of Mailing (City & State):

5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of person completing this form

MICAH KELLEY

Date:

Type or print name:

MICAH KELLEY

PROOF OF SERVICE BY MAIL

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

(IN PRO PER)

[C.C.P. §§ 446, 2015.5; 28 U.S.C. §1746]

I, Kenneth Wilson, am a resident of the State of California and am over the age of eighteen years and am not a party to the above-entitled action. My address is listed below.

On 4/29/08, I served the following documents:

by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid in the United States Mail by delivering to prison officials for processing through the Institution's internal legal mail system at San Diego California, addressed as follows::

WRIT OF HABEAS CORPUS CALIFORNIA
Petition For State SUPREME
REVIEW COURT
350 MC ALINTER ST
SAN FRANCISCO, CA 94102

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed in the County of San Diego, California on 4/29/08 J09593

Kenneth R Wilson
Michael Kelly

MICHAEL KELLY # P.21536

FAC. 7.5614 #136 4805 ALVARADO

P.O. Box 799007

San Diego, CA 92179-9007

Pursuant to the holding of the United States Supreme Court in Houston v. Lack 108 S. Ct. 2379, 487 U.S. 266, 101 L.Ed.2d 245 (1988) and FRAP, Rule 4 (c) inmate legal documents are deemed filed on the date they are delivered to prison staff for processing and mailing via the Institution's internal legal mail procedures.

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. It is required for the use of the Clerk of Court for the purpose of maintaining the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Micah Kelley

Hernandez, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

1984 September 1988
FILING FEE PAID
Yes No
IF MOTION FILED
Yes No
CONFESSION TO
Court Prosec

FILED
AUG - 7 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
EX RY DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Micah Kelley
PO Box 799001
San Diego, CA 92179
P-21536

ATTORNEYS (IF KNOWN)

'08 CV 1440 BTM BLM

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|----------------------------|----------------------------|----------------------------|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
- Citizen of This State Incorporated or Principal Place of Business in This State
Citizen of Another State Incorporated and Principal Place of Business in Another State
Citizen or Subject of a Foreign Country Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 8/7/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Muley